

(A) The formula used for statistical estimates;

(B) The standard error for each component;

(C) The test statistics, the description of how the tests were conducted, related computations, computer programs, and all final results; and

(D) Summarized descriptions of input data and, if requested, the input data themselves.

(f) *Objections; offers of proof.* Parties are entitled to raise objections to evidence on any proper ground during the course of the hearing, including an objection that an opposing party has not furnished unprivileged underlying documents. If the Board rejects or excludes testimony, the participant proffering the testimony may submit an offer of proof for the record. In the case of documentary or written evidence, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(g) *New documents for use in cross-examination.* Documents that have not been identified and exchanged in advance may be shown to a witness on cross-examination. However, copies of such documents must be distributed to the Board and to the other participants before being shown to the witness at the time of cross-examination, unless the Board directs otherwise. If the document is not, or will not be, supported by a witness for the cross-examining party, that document can be used solely to impeach the witness's direct testimony.

#### § 351.11 Rebuttal proceedings.

Written rebuttal statements shall be filed at a time designated by the Copyright Royalty Board upon conclusion of the hearing of the direct case, in the same form and manner as the written direct statement, except that the claim or the requested rate shall not have to be included if it has not changed from the written direct statement. Further proceedings at the rebuttal stage shall follow the schedule ordered by the Board.

#### § 351.12 Requests for additional discovery during the hearing in rate proceedings.

(a) A participant may, in the course of a royalty rate hearing, request of an opposing participant or witness other relevant information. The request may be made by means of written motion or oral motion on the record. The Copyright Royalty Board will allow such request only if they determine that, absent the discovery sought, their ability to achieve a just resolution of the proceeding would be substantially impaired.

(b) In determining whether discovery will be granted under this section, the Copyright Royalty Board will consider—

(1) Whether the burden or expense of producing the requested information or materials outweighs the likely benefit, taking into account the needs and resources of the participants, the importance of the issues at stake, and the probative value of the requested information or materials in resolving such issues;

(2) Whether the requested information or materials would be unreasonably cumulative or duplicative, or are obtainable from another source that is more convenient, less burdensome, or less expensive; and

(3) Whether the participant seeking the discovery had an ample opportunity by previous discovery in the proceeding or by other means to obtain the information sought.

(c) This section shall not apply to any proceeding scheduled to commence after December 31, 2010.

#### § 351.13 Closing the record.

To close the record of a hearing, the Chief Judge shall make an announcement that the taking of testimony has concluded. In its discretion the Copyright Royalty Board may close the record as of a future specified date, and all time for exhibits yet to be prepared to be admitted, provided that the parties to the proceeding stipulate on the record that they waive the opportunity to cross-examine or present evidence with respect to such exhibits. The record in any hearing that has recessed may not be closed by the Chief Judge before the day on which the hearing is

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to resume, except upon ten days' notice to all parties.

### § 351.14 Transcript and record.

(a) An official reporter for the recording and transcribing of hearings shall be designated by the Copyright Royalty Board. Anyone wishing to inspect the transcript of a hearing may do so at the offices of the Board.

(b) The transcript of testimony and all exhibits, documents, filings and other items submitted in the course of a proceeding shall constitute the official written record. The written record, along with the Board's final determination, shall be available at the Board's offices for public inspection and copying.

### § 351.15 Proposed findings of fact and conclusions of law.

(a) Any party to the proceeding may file proposed findings of fact and conclusions, briefs or memoranda of law, or may be directed by the Board to do so. Such filings, and any replies to them, shall take place at such time after the record has been closed as the Board directs.

(b) Failure to file when directed to do so shall be considered a waiver of the right to participate further in the proceeding unless good cause for the failure is shown.

(c) Proposed findings of fact shall be numbered by paragraph and include all basic evidentiary facts developed on the record used to support proposed conclusions, and shall contain appropriate citations to the record for each evidentiary fact. Proposed conclusions shall be stated and numbered by paragraph separately.

## PART 352—DETERMINATIONS

Sec.

352.1 How made.

352.2 Timing.

352.3 Final determinations.

AUTHORITY: 17 U.S.C. 803.

SOURCE: 70 FR 30905, May 31, 2005, unless otherwise noted.

### § 352.1 How made.

Except for decisions authorized by law to be made by a single Copyright Royalty Judge, determinations of the

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Board in a proceeding will be made by a majority of the Copyright Royalty Judges. The opinion or opinions of the majority and any dissenting opinion will be included in the determination. Each determination by the Board will be transmitted to the Register of Copyrights to enable review for consistency with the Copyright Act on the day it is issued.

### § 352.2 Timing.

The Copyright Royalty Board will issue its determination within 11 months of the date of the post-discovery settlement conference or 15 days before the expiration of the existing rates or terms in a proceeding to determine successors to rates or terms that will expire on a specific date, whichever date first occurs.

### § 352.3 Final determinations.

The determination by the Board in a proceeding will become final 15 days after it is issued, unless it is withdrawn by the Board on its own motion, suspended pending rehearing proceedings, or the Register of Copyrights advises the Board that its determination is inconsistent with the Copyright Act. The final determination will be published in the FEDERAL REGISTER.

## PART 353—REHEARING

Sec.

353.1 When granted.

353.2 Form and content of rehearing motions.

353.3 Procedure on rehearing.

353.4 Filing deadline.

353.5 Participation not required.

AUTHORITY: 17 U.S.C. 803.

SOURCE: 70 FR 30905, May 31, 2005, unless otherwise noted.

### § 353.1 When granted.

A motion for rehearing may be filed by any participant in the relevant proceeding. The Copyright Royalty Board may grant rehearing upon a showing that any aspect of the Board's determination may be erroneous. Rehearing will be granted only in exceptional cases, however, and should not be sought merely to reargue a rate or distribution level determination that falls